



PUBLIC EMPLOYMENT RELATIONS BOARD

2005-2006 ANNUAL REPORT

October 15, 2006



ARNOLD SCHWARZENEGGER, GOVERNOR

STATE OF CALIFORNIA

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Board Members

JOHN C. DUNCAN
ALFRED K. WHITEHEAD
LILIAN S. SHEK
SALLY M. MCKEAG
KAREN L. NEUWALD

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PUBLIC EMPLOYMENT RELATIONS BOARD

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October 15, 2006

Dear Members of the Legislature and fellow Californians:

The Public Employment Relations Board (PERB) reached a milestone this year celebrating its 30th year in business. Jurisdiction which started with just the Educational Employment Relations Act (EERA) establishing collective bargaining in California's public schools and community colleges has expanded to cover seven collective bargaining statutes encompassing 7,000 public employers and over 2 million employees, the overwhelming majority of the public sector in California. PERB is responsible for administering and enforcing these laws in an expert, fair and consistent manner, and has done so now for three decades.

These are busy times at PERB. The number of cases reviewed each year by the Board has significantly increased since cities, counties and special districts under the Meyers-Milias-Brown Act were added to PERB's jurisdiction through legislation passed in 2000. The number of unfair labor practice charges has climbed dramatically from 461 in Fiscal Year 2000-2001 to 1,012 in Fiscal Year 2005-2006.

The majority of the Board's complaints are resolved through voluntary settlement agreements, an important step in the adjudicatory process that we offer. In Fiscal Year 2005-2006, the rate of settlement at the informal conference was actually 61%, a slightly higher rate than in past years. In cases where mediation is not successful, the parties are provided the opportunity to litigate their disputes quickly and efficiently. One of the Board's most critical jobs is to provide guidance to the parties through clear and concise decisions. The Board itself issued 80 decisions in the last fiscal year.

PERB's litigation cases increased significantly, 69% over the prior fiscal year. While some of this increased activity involved defending Board decisions in Appellate Court, this litigation growth is also partly attributable to an aggressive effort on PERB's part to protect our initial exclusive jurisdiction over the statutes it administers. The number of injunctive relief requests taken under consideration by the Board grew from 14 in the previous year to 23 in Fiscal Year 2005-2006 as well. Only two were granted reflecting the high standard of "extraordinary circumstances" needed to be proven by the affected party when attempting to pursue this course of action.

PERB continued reaching out to its constituents in multiple ways over the last year. Plans for a 30th Anniversary Conference were well underway by the end of the fiscal year. Significant improvements were made to our website allowing Board decisions and regulations to be accessed and reviewed on-line. Unfair Practice charges can now be filed on-line. The Advisory Committee composed of key members of the public sector labor and management communities continued to assist in developing further recommendations on how PERB can improve.

All of us at PERB hope that you find this report informative and helpful. The Board is committed to even further improvements and the swift resolution of disputes in the months and years ahead.

Respectfully submitted,

John C. Duncan
Chairman

Introduction of Board Members and Administrators

Board Members

John Duncan was appointed to the Board and designated Chairman by Governor Arnold Schwarzenegger February 2004. Prior to his appointment, he was president of Duncan Consulting, Inc. and served as a member of the Governor-Elect's Transition Team staff. Mr. Duncan previously served in the cabinet of Governor Pete Wilson as the Director of the Department of Industrial Relations. Following that service he was chairman of the California Employment Training Panel. Before his state service, Mr. Duncan was special assistant to then Secretary of Defense, Caspar Weinberger. He was assistant to the secretary at the Department of Defense from 1985 to 1987, and special assistant to the deputy assistant secretary of defense for International Security Affairs, East Asia and Pacific Affairs from 1983 to 1984. Mr. Duncan is a graduate of the University of California, Berkeley with a bachelor's degree in history and holds a masters degree in public administration from Harvard University's John F. Kennedy School of Government. His term expires on December 31, 2008.

Lilian S. Shek was appointed to the Board by Governor Arnold Schwarzenegger November 2004. Prior to her appointment, she was an Administrative Law Judge II for the Unemployment Insurance Appeals Board, where she served from April, 1992 to November, 2004. In 1994, Governor Pete Wilson appointed her to the Governor's Advisory Selection Committee, the Regents of the University of California. Before April, 1992, she was an attorney in private practice, an assistant professor and lecturer in business law at California State University, Sacramento; a hearing officer for the Sacramento County Civil Service Commission; and a judge pro tem for the Small Claims Department of Sacramento County Superior and Municipal Courts. She was an assistant counsel for the California Farm Bureau Federation; and received a Reginald Heber Smith Community Lawyer Fellowship to serve as a staff attorney for the San Francisco Neighborhood Legal Assistance Foundation and Legal Services of Northern California. She was actively involved in several professional organizations. She was a Barrister of the Anthony M. Kennedy American Inns of Court; Chair of the California State Bar Committee on Women in the Law; President of Women Lawyers of Sacramento; and a member of the American Women Judges Delegation to the People's Republic of China. She earned her Bachelor of Arts degree in sociology from the University of California, Berkeley; her Doctor of Jurisprudence degree from Hastings College of the Law, University of California; and her Masters of Business Administration degree from California State University, Sacramento. Her term expires on December 31, 2007.

Sally M. McKeag was appointed to the Board by Governor Arnold Schwarzenegger in March 2005. Prior to her appointment, she served as Chief Deputy Director of the California Employment Development Department since January 2004. She also served as Deputy Staff Director of the Governor-Elect's Transition Team. Her term ends on December 31, 2006.

Ms. McKeag initially served as Chief of Staff to the Department of Labor's Employment and Training Administration Assistant Secretary, and then assisted in the creation of ETA's Business Relations Group (BRG). The BRG applies innovative approaches to help business and industry better access the services of the state and local workforce investment system and

to ensure the workforce investment system understands the skills and training needs of the 21st Century workforce.

Ms. McKeag served in a variety of capacities for the California State Senate and the Wilson Administration. Specifically, she was Director of Public Affairs for the Senate Republican Caucus where she oversaw the development and implementation of strategies to support Senate members in representing their constituencies. Under Governor Pete Wilson, she served as Deputy Director of Operations for the Department of Consumer Affairs, Acting Deputy Director of the Department of Fish and Game, and Director of the Governor's Office of Constituent Affairs. Prior to the Wilson Administration, she served in the Reagan and Bush Administrations in Washington, D.C. She was the Director of the Executive Secretariat at the Environmental Protection Agency, overseeing the coordination of all correspondence and other official documents for the EPA Administrator. Ms. McKeag was also Special Assistant to the Secretary of the Interior, supervising all functions related to scheduling of the Secretary's participation in official and political events.

Karen L. Neuwald was appointed to the Board July 2005. Prior to her appointment she was the Chief of the Office of Governmental Affairs at the California Public Employees' Retirement System for two years. She served as the Assistant Director for Legislation at the Department of General Services from November, 1996 to July, 2003. For 11 years prior to DGS, Ms. Neuwald worked at the Department of Personnel Administration. She began her career at DPA working on policy and legal issues, and then spent six years directing DPA's legislative program. Ms. Neuwald had her entrée in state government in 1982 working as an analyst at the Legislative Analyst's Office. As a program analyst, she worked on budget matters related to employee compensation, collective bargaining, health care, and retirement issues. Overall, Ms. Neuwald has enjoyed a 24 year career in state government service. Ms. Neuwald is a graduate of the University of Oklahoma and the University of Texas, where she received a master's degree in public affairs. Her term expires on December 31, 2009.

Alfred K. Whitehead, appointed to the Board January 2001, is General President Emeritus for the International Association of Fire Fighters (IAFF), where he served from 1988 to August 2000. In 1982, he was elected General Secretary/Treasurer of the IAFF and was re-elected through 1988. Mr. Whitehead served as a fire captain for the Los Angeles County Fire Department from 1954 to 1982. He was a member of the Los Angeles County Fire Fighters Local 1014 for more than 20 years and was President for 12 years. Mr. Whitehead is a former member of the Los Angeles County Board of Retirement and served as an elected official to the National Conference on Public Employee Retirement Systems for more than 17 years. He attended East Los Angeles College, is a veteran of the United States Army, and also served as a United States Merchant Marine. His term expired on December 31, 2005.

Legal Advisers

Gregory T. Lyall was appointed as Legal Adviser to Member Sally M. McKeag in June 2005. Previously, Mr. Lyall served as a staff counsel at the California Department of Personnel Administration from 2001 to 2005. Before entering state service, Mr. Lyall was an associate attorney with the law firms of Kronick, Moscovitz, Tiedemann & Girard (1997-2001) and Pinnell & Kingsley (1994-1997). Mr. Lyall received his B.S. degree in Biology from the University of Southern California and his Juris Doctorate from the University of San Diego School of Law where he graduated with *cum laude* honors and served as a member of the San Diego Law Review. Mr. Lyall currently teaches a class on labor and employment law through U.C. Davis Extension.

In September 2005, **Heather Glick** was appointed as Legal Adviser to Member Karen L. Neuwald. Ms. Glick began her career in labor and employment law in law school when she clerked for Los Angeles Unified School District and Milwaukee Public Schools in their respective labor relations departments. Upon graduating from Valparaiso University School of Law, she worked for the State of Illinois as Labor Relations Counsel where she represented all agencies under the auspice of the Governor in arbitrations and before the Illinois Labor Relations Board. After leaving state service, Ms. Glick worked for Ancel, Glink, Diamond, Bush, DiCianni & Rolek (2002-2004) and Liebert Cassidy Whitmore (2004-2005) boutique, firms specializing in local government law. Ms. Glick received a B.A. degree in Sociology of Law and English from the University of California, Davis and her Juris Doctorate from Valparaiso University School of Law.

Appointed by Governor Arnold Schwarzenegger as legal adviser to Chairman John C. Duncan, April 1, 2004, **Bilenda Harris-Ritter** is a graduate of the University of Southern California with a degree in Journalism. Prior to attending law school she was press deputy to a member of the California State Assembly. She also represented California Metalforming as a lobbyist and was a member of the Machine Guarding Advisory Board to OSHA from 1983-1986.

Ms. Harris-Ritter graduated from Southwestern University School of Law in Los Angeles. Prior to her appointment she was in private civil practice. She served as a workers compensation administrative law judge pro tempore at the Stockton Workers Compensation Appeals Board. Ms. Harris-Ritter also completed an intensive program in mediation training at Pepperdine University School of Law. A founding member of the Crime Victims Assistance Association of Arkansas, she has been instrumental in bringing changes to clemency-procedure laws in Arkansas. Ms. Harris-Ritter worked as a Legal Adviser to Chairman Duncan until she was appointed by the Governor as a Commissioner to the State Board of Parole Hearings on July 7, 2006.

Appointed as Legal Adviser to Member Alfred K. Whitehead in March 2002, **Laurie Epstein-Terris** earned her B.A. in Economics from the University of Colorado, Boulder, an M.S. in Industrial Relations from the University of Wisconsin, Madison, and her J.D. from the University of California, Davis School of Law. She has been a member of the State Bar since 1984. From 1988 to March 2002, she served as Senior Staff Counsel for the Department of Water Resources and part-time as a Hearing Officer over bid protests for the State Board of Control. In 1987 to mid 1988, Ms. Epstein-Terris was employed as Staff Counsel with the Department of General Services. While a law student, she served as a legal intern for Board Member John Jaeger and in 1986-1987, was employed as legal counsel in PERB's General Counsel's Office. Ms. Epstein-Terris served as

Legal Adviser to Member Whitehead until December 2005 (just prior to the end of his term) and is currently employed in the Legal Division at the Department of Transportation.

Administrators

Chief Administrative Law Judge **Fred D'Orazio** joined PERB as an administrative law judge in 1978. He was promoted to chief administrative law judge in 2003. He served for ten years as annual editor of California Public Sector Labor Relations, a treatise sponsored by the Employment and Labor Law Section of the State Bar of California and published by Matthew Bender. He authored a Pocket Guide to the Ralph C. Dills Act, published by the California Public Employee Relations, Institute of Industrial Relations, University of California, Berkeley. He has also taught public sector labor law at Golden Gate University School of Law and administrative law at University of San Francisco School of Law. He received his B.S. from George Washington University and his J.D. from American University, Washington College of Law. Prior to joining PERB, he was Assistant General Counsel for the National Treasury Employees Union.

PERB General Counsel **Robert Thompson** began working for PERB in 1980 as a Legal Adviser to then Chair Harry Gluck. He has also worked as a Regional Attorney and Deputy General Counsel. He received a Bachelor of Sciences degree in Chemical Engineering from Northwestern University and is an adviser to the Executive Committee of the Labor and Employment Law Section of the State Bar of California.

Eileen Potter began working for PERB in 1993 as the Administrative Officer. Her state service includes the Governor's Office of Planning and Research (OPR) from 1979 through 1990 culminating in her appointment as the Assistant Chief of Administration. After leaving OPR, Ms. Potter worked at the Office of Statewide Health Planning and Development and the Department of Health Services before coming to PERB as its Administrative Officer. She has a degree in Criminal Justice Administration with minors in Accounting and English from California State University, Sacramento.

Anita I. Martinez has been employed with PERB since 1976 and has served as San Francisco Regional Director since 1982. Her duties include supervision of the regional office, investigation of representation cases and unfair practice charges, and the conduct of settlement conferences, representation hearings, and elections. Before joining PERB, Ms. Martinez worked for the National Labor Relations Board in San Francisco and the Agricultural Labor Relations Board in Sacramento and Salinas. A contributing author of the Matthew Bender treatise, California Public Sector Labor Relations, she has also addressed management and employee organization groups regarding labor relations issues. A San Francisco native, Ms. Martinez received her B.A. from the University of San Francisco.

Les Chisholm has served as Sacramento Regional Director for PERB since 1987. His duties include investigation of representation cases and unfair practice charges, and conduct of settlement conferences and representation hearings and elections. Mr. Chisholm also has responsibilities in the areas of legislation, rulemaking and computer projects for the Board. He received an M.A. in political science from the University of Iowa.

I. OVERVIEW

Statutory Authority and Jurisdiction

The Public Employment Relations Board (PERB or Board) is a quasi-judicial agency created by the Legislature to oversee public sector collective bargaining in California. The Board now administers seven collective bargaining statutes, ensures their consistent implementation and application, and adjudicates disputes between the parties subject to them. The statutes administered by PERB since the mid-1970's are: the Educational Employment Relations Act (EERA) of 1976 (Gov. Code, sec. 3540, et seq.), authored by State Senator Albert S. Rodda, establishing collective bargaining in California's public schools (K-12) and community colleges; the State Employer-Employee Relations Act of 1978, known as the Ralph C. Dills Act (Dills Act) (Gov. Code, sec. 3512, et seq.), establishing collective bargaining for state employees; and the Higher Education Employer-Employee Relations Act (HEERA) of 1979 (Gov. Code, sec. 3560, et seq.), authored by Assemblyman Howard Berman, extending the same coverage to the California State University and University of California systems and Hastings College of Law.

As of July 1, 2001, PERB acquired jurisdiction over the Meyers-Milias-Brown Act (MMBA) of 1968 (Gov. Code, sec. 3500, et seq.), which established collective bargaining for California's city, county, and local special district employers and employees. PERB's jurisdiction over the MMBA excludes peace officers, management employees, and the City and County of Los Angeles.

On January 1, 2004, PERB's jurisdiction was expanded to include the supervisory employees of the Los Angeles County Metropolitan Transportation Authority. The Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) is codified at Public Utilities Code section 99560, et seq.

Effective August 16, 2004, PERB also acquired jurisdiction over the Trial Court Employment Protection and Governance Act (Trial Court Act) of 2000 (Gov. Code, sec. 71600, et seq.) and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) of 2002 (Gov. Code, sec. 71800, et seq.).

Since 2001, approximately 2 million public sector employees and their employers are included within the jurisdiction of the seven labor statutes administered by PERB. The approximate number of employees under such statutes is as follows: 675,000 work for California's public education system from pre-kindergarten through and including the community college level; 125,000 work for the State of California; the University of California, California State University and the Hastings College of Law employ 100,000; and the remainder are employees of California's cities, counties, special districts, trial courts, and the Los Angeles County Metropolitan Transportation Authority.

PERB's Purpose and Duties

The Board

The Board itself is composed of up to five Members appointed by the Governor and subject to confirmation by the State Senate. Board Members are appointed to five-year terms, with the term of one Member expiring at the end of each calendar year. In addition to the overall responsibility for administering the seven statutes, the Board acts as an appellate body to hear challenges to proposed decisions that are issued by Board agents. Decisions of the Board itself may be appealed under certain circumstances, and then only to the state appellate courts. The Board, through its actions and those of its agents, is empowered to:

- Conduct elections to determine whether or not employees wish to have an employee organization exclusively represent them in their labor relations with their employer;
- Prevent and remedy unfair labor practices, whether committed by employers or employee organizations;
- Deal with impasses that may arise between employers and employee organizations in their labor relations in accordance with statutorily established procedures;
- Ensure that the public receives accurate information and has the opportunity to register its opinions regarding the subjects of negotiations between public sector employers and employee organizations;
- Interpret and protect the rights and responsibilities of employers, employees and employee organizations under the Acts;
- Bring action in a court of competent jurisdiction to enforce PERB's decisions and rulings;
- Conduct research and training programs related to public sector employer-employee relations;
- Take such other action as the Board deems necessary to effectuate the purposes of the Acts that it administers.

A summary of the Board's 2005-2006 decisions is included in the Appendices beginning at page 21.

Major PERB Functions

The major functions of PERB involve: (1) the investigation and resolution of unfair practice charges; (2) the administration of the representation process through which public employees freely select employee organizations to represent them in their labor relations with their employer; (3) the appeals of Board staff determinations to the Board itself; and (4) the legal functions performed by the Office of the General Counsel.

Unfair Practice Charges

The investigation and resolution of unfair practice charges is the major function performed by PERB. Unfair practice charges may be filed with PERB by an employer, employee organization, or employee. These allege an employer or employee organization engaged in conduct that is unlawful under one of the labor statutes administered by PERB. Examples of unlawful employer conduct include refusing to negotiate in good faith with an employee organization; disciplining or threatening employees for participating in union activities; or promising benefits to employees if they refuse to participate in union activity. Examples of unlawful employee organization conduct are: threatening employees if they refuse to join the union; disciplining a member for filing an unfair practice charge against the union; or failing to represent bargaining unit members fairly in their employment relationship with the employer.

An unfair practice charge filed with PERB is reviewed by Board agents to determine whether a prima facie violation of the statute has been established. A charging party establishes a prima facie case by alleging sufficient facts to permit a reasonable inference that a violation of the EERA, Dills Act, HEERA, MMBA, TEERA, Trial Court Act or Court Interpreter Act has occurred. If the charge fails to state a prima facie case, a Board agent issues a warning letter notifying the charging party of the deficiencies of the charge. The charging party is given time to either amend or withdraw its charge. If the charge is not amended or withdrawn, it is dismissed. The charging party then has the option of appealing the dismissal to the Board itself.

If the Board agent determines that a charge, in whole or in part, states a prima facie case of a violation, a formal complaint is issued. The respondent may file an answer to the complaint.

Once a complaint has been issued, a Board agent is assigned to the case and calls the parties together for an informal settlement conference. The conference usually is held within 30 days of the date of the complaint. If settlement is not reached, a formal hearing before a PERB Administrative Law Judge (ALJ) is scheduled. That usually occurs within 100 to 120 days from the date of the informal conference. Following this adjudicatory proceeding, the ALJ prepares and issues a proposed decision. A party to the case may then appeal the proposed decision to the Board itself. The Board itself may affirm, modify, reverse or remand the proposed decision.

Proposed decisions which are not appealed to the Board itself are binding upon the parties to the case but may not be cited as precedent in other cases before the Board.

Decisions of the Board itself are both binding on the parties to a particular case and precedential. PERB decisions are now available on our website (<http://www.perb.ca.gov>), and all decisions will be available soon. Interested parties can also now sign-up for electronic notification of new Board decisions. Unfair practice charges can now be filed on-line.

Representation

The representation process normally begins when a petition is filed by an employee organization to represent employees in classifications which have an internal and occupational community of interest. In most situations, if only one employee organization petition is filed, with majority support, and the parties agree on the description of the bargaining unit, the employer must grant recognition to the employee organization as the exclusive representative of the bargaining unit employees. If more than one employee organization is competing for representational rights of the same bargaining unit, an election is mandatory.

If either the employer or an employee organization disputes the appropriateness of the proposed bargaining unit, a Board agent holds a settlement conference to assist the parties in resolving the dispute. If the dispute cannot be settled voluntarily, a Board agent conducts a formal investigation and/or hearing and issues a written determination. That determination sets forth the appropriate bargaining unit, or modification of that unit, based upon statutory unit determination criteria and appropriate case law. Once an initial bargaining unit has been established, PERB conducts a representation election in cases where the employer has not granted recognition to an employee organization to serve as the exclusive representative. PERB also conducts decertification elections when a rival employee organization or group of employees obtains sufficient signatures to call for an election to remove the incumbent organization. The choice of "No Representation" appears on the ballot in every representation election.

A summary of PERB's representation activity is included at page 18.

Mediation/FactFinding

PERB staff also assist parties in reaching negotiated agreements through the mediation process provided in EERA, HEERA, and the Dills Act, and through the factfinding process provided under EERA and HEERA. If the parties are unable to reach an agreement during negotiations either party may declare an impasse. If that occurs, a Board agent contacts both parties to determine if they have reached a point in their negotiations that further meetings without the assistance of a mediator would be futile. Once PERB has determined an impasse exists, the State Mediation and Conciliation Service of the Department of Industrial Relations is contacted to assign a mediator.

If settlement is not reached during mediation, either party, under EERA and HEERA, may request the implementation of statutory factfinding procedures. PERB provides lists of neutral factfinders who make findings of fact and advisory recommendations to the parties concerning terms of settlement.

Appeals Office

The Appeals Office, under direction of the Board itself, ensures that all appellate filings comply with Board regulations. It maintains case files, issues decisions rendered and prepares

administrative records filed with California appellate courts. This office is the main contact with parties and their representatives while cases are pending before the Board itself.

Office of the General Counsel

The legal representation function of the Office of the General Counsel includes:

- Defending final Board decisions or orders in unfair practice cases when parties seek review of those decisions in state appellate courts;
- Seeking enforcement when a party refuses to comply with a final Board decision, order or ruling, or with a subpoena issued by PERB;
- Seeking appropriate interim injunctive relief against those responsible for certain alleged unfair practices;
- Defending the Board against attempts to stay its activities, such as complaints seeking to enjoin PERB hearings or elections; and
- Defending the jurisdiction of the Board, submitting amicus curiae briefs and other motions, and appearing in cases in which the Board has a special interest.

A summary of litigation activity is included later in this report at page 55.

Other PERB Functions and Activities

Information Requests

As California's expert administrative agency in the area of public sector collective bargaining, PERB is consulted by similar agencies from other states concerning its policies, regulations and formal decisions. Information requests from the Legislature and the general public are also received and processed.

Support Functions and Board Operations

The Administration Section provides support services to PERB, such as business services, personnel, accounting, information technology, mail and duplicating. This section also handles budget development and maintains liaison with the Department of Finance and other state agencies.

PERB emphasizes automation as a means of increasing productivity, allowing it to handle increased workload with reduced staffing. PERB has also moved forward with the full development of its website, allowing those who do business with PERB the ability to access PERB decisions, forms and the Board's regulations and statutes on-line.

III. LEGISLATION AND RULEMAKING

Legislation

There was no major legislation in 2005 that directly affected PERB or its jurisdiction. There were, however, amendments enacted affecting both the Dills Act and the Trial Court Act.

Section 3517.63 was added to the Dills Act by Senate Bill 621 (Chapter 499, Statutes of 2005). This new section provides that any side letter, appendix, or other addendum to a properly ratified memorandum of understanding that requires the expenditure of two hundred fifty thousand dollars (\$250,000) or more related to salary and benefits and that is not already contained in the original memorandum of understanding or the Budget Act, shall be provided by the Department of Personnel Administration to the Joint Legislative Budget Committee. The Joint Legislative Budget Committee shall determine within 30 days after receiving the side letter, appendix, or other addendum if it presents substantial additions that are not reasonably within the parameters of the original memorandum of understanding and thereby requires legislative action to ratify the side letter, appendix, or other addendum. In addition, a side letter, appendix, or other addendum to a properly ratified memorandum of understanding that does not require the expenditure of funds shall be expressly identified by the Department of Personnel Administration if that side letter, appendix, or other addendum is to be incorporated in a subsequent memorandum of understanding submitted to the Legislature for approval.

Section 71622 of the Trial Court Act was amended by Senate Bill 1108 (Chapter 22, Statutes of 2005). Senate Bill 1108 included technical, nonsubstantive changes in various provisions of law, including Section 71622, to effectuate the recommendations made by the Legislative Counsel to the Legislature, pursuant to existing law that directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

Rulemaking

Effective May 11, 2006, a number of regulations were amended, added or repealed. This package took effect following publication in December 2005 of a Notice of Proposed Rulemaking, a public hearing by the Board on February 9, 2006, and Board approval of the rulemaking package, also on February 9, 2006. In addition to a number of clarifying amendments to existing rules, particularly in the areas of filing and service requirements, the changes included:

- The repeal of separate processes for filing financial statement and public notice complaints, and petitions for Board review under MMBA, and amendments to existing regulations to make it clear that such issues should instead be addressed through the filing of unfair practice charges.
- More specific requirements concerning when proof of support must accompany the filing of a unit modification petition.
- A new regulation enabling the on-line filing of unfair practice charges.

- Reference to the six-month statute of limitations for the filing of unfair practice charges under the MMBA, pursuant to Coachella Valley Mosquito and Vector Control District v. PERB (2005) 35 Cal.4th 1072.

At a public meeting held on December 8, 2005, the Board considered and adopted final revisions to the agency's conflict-of-interest code, codified at PERB Regulation 31100, pursuant to Government Code Section 87306 and Section 18750 of the Regulations of the Fair Political Practices Commission (FPPC). Final approval of the revised code by the FPPC was certified on December 22, 2005, and the revisions took effect on March 16, 2006.

Following suggestions by interested parties that PERB's agency fee regulations be revised, a workshop was held on May 16, 2006, to allow all interested parties an opportunity to discuss these issues with PERB staff and one another. The May 2006 workshop followed a format similar to one held earlier in March 2005. The Board has not yet determined whether to initiate formal rulemaking in this area.

IV. CASE DISPOSITIONS

Unfair Practice Charge Processing

The number of unfair practice charges filed with PERB continues to increase as the new public employers and employee organizations under PERB's jurisdiction realize that PERB can assist in resolving their labor disputes. In 2005-2006, 1,012 new charges were filed. This number represents a 16% increase over the prior fiscal year's charge filings of 870. (The 1,126 charges filed in 2004-2005 were adjusted to discount 256 nearly identical charges filed by a single group of employees.) The 2005-2006 increase continued an overall increase in filings since July 2001. The average number of unfair practice charges filed during the ten years prior to July 1, 2001, was 551 per year. The average number of annual filings since July 1, 2001 is 857.¹

Dispute Resolutions and Settlements

PERB stresses the importance of voluntary dispute resolution. This emphasis begins with the first step of the unfair practice charge process, the investigation. During this step of the process, 419 cases were withdrawn, many through informal resolution by the parties. The General Counsel's staff conducted 310 days of settlement conferences in cases where a complaint issued. These efforts resulted in voluntary settlements in 206 cases, or 61% of those cases in which settlement efforts concluded, compared to only 127 cases subsequently assigned for hearing.

PERB's high success rate in mediating voluntary settlements is due to the tremendous skill and efforts of its staff. As the efforts of PERB's staff demonstrate, voluntary settlements are the most efficient way of resolving disputes as well as providing an opportunity for the parties to improve their relationship. PERB looks forward to continuing this commitment to voluntary dispute resolution.

Administrative Adjudication

Complaints that are not resolved through voluntary mediation are sent to the Division of Administrative Law for an evidentiary hearing before an ALJ. During this fiscal year, the workload of the Division remained relatively consistent with the workload and productivity since the effective date of PERB jurisdiction over the MMBA in July 2001. In 2005-2006 ALJs issued 46 proposed decisions with average time of decision issuance 100 days. In 2004-2005 ALJs issued 49 proposed decisions with average time of decision issuance 63 days. In 2003-2004, ALJs issued 47 proposed decisions with average time for issuance 53 days. In 2002-2003, ALJs issued 52 proposed decisions with average time for issuance 53 days. In

¹ The average number (857) is calculated after discounting for the 256 nearly identical charges filed by a single group of employees in 2004-2005 and for a similar set of filings in 2001-2002.

addition, of the 46 proposed decisions issued this fiscal year, 18 have been appealed to the Board, 27 have become final and exceptions are pending in one case.

Board Decisions

Proposed decisions issued by the Division of Administrative Law are subject to review by the Board itself. During the fiscal year, the Board issued 80 decisions and took under consideration 23 requests for injunctive relief.

Litigation

PERB experienced a 69% increase in the number of litigation cases over the prior fiscal year. There were 22 new litigation cases opened in 2005-2006, compared to 13 new cases in the prior fiscal year. A total of 25 litigation cases, including new and continuing cases, were handled during Fiscal Year 2005-2006 (summarized in the Appendices, pages 55-59).

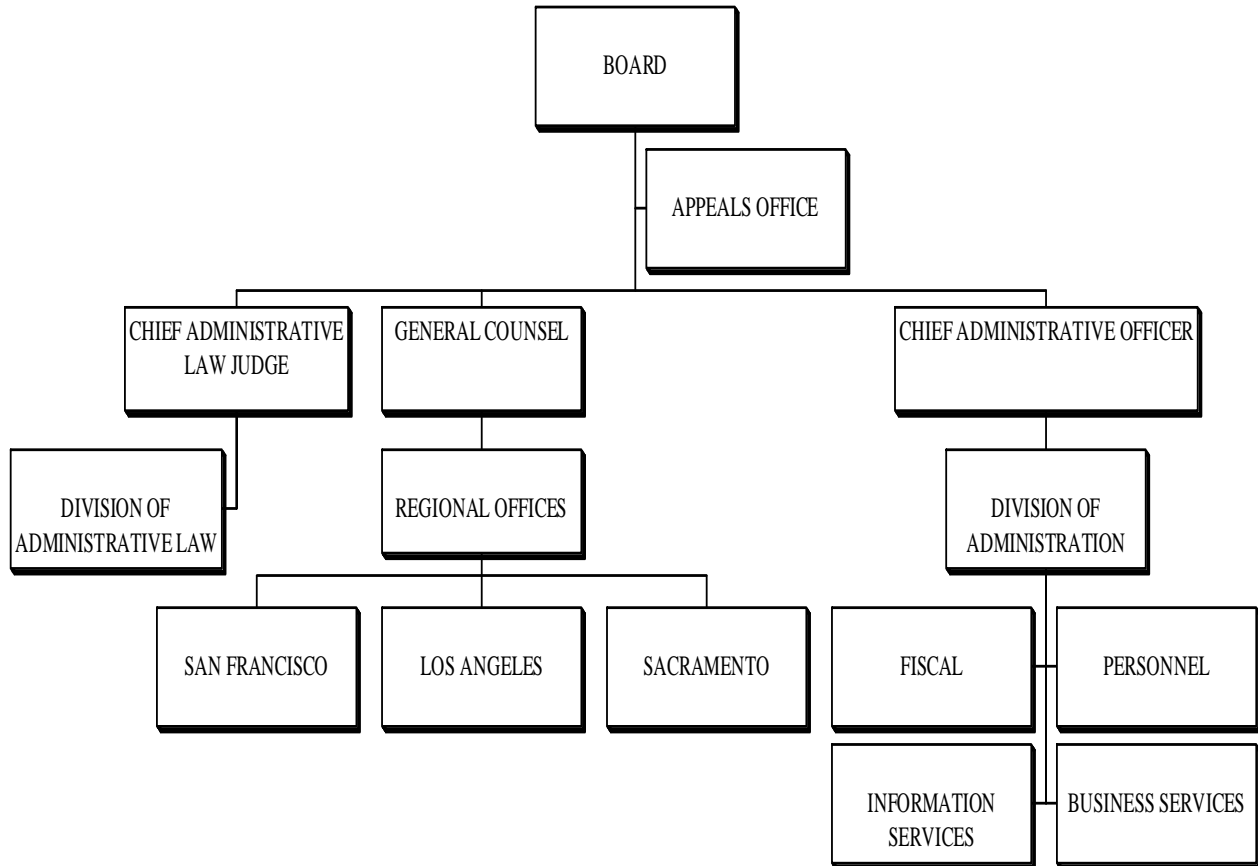
Representation Activity

For the fiscal year, 360 new cases were filed; a decrease of only one from the prior year, but 19 more than the 4-year average. The fiscal year total includes 207 mediation and 38 factfinding requests, compliance concerning 15 cases, 98 representation petitions (recognition, severance, certification, decertification, amendment of certification, unit modification, and board review), and 5 other cases (organizational security rescission, arbitration, financial statement complaints and public notice complaints).

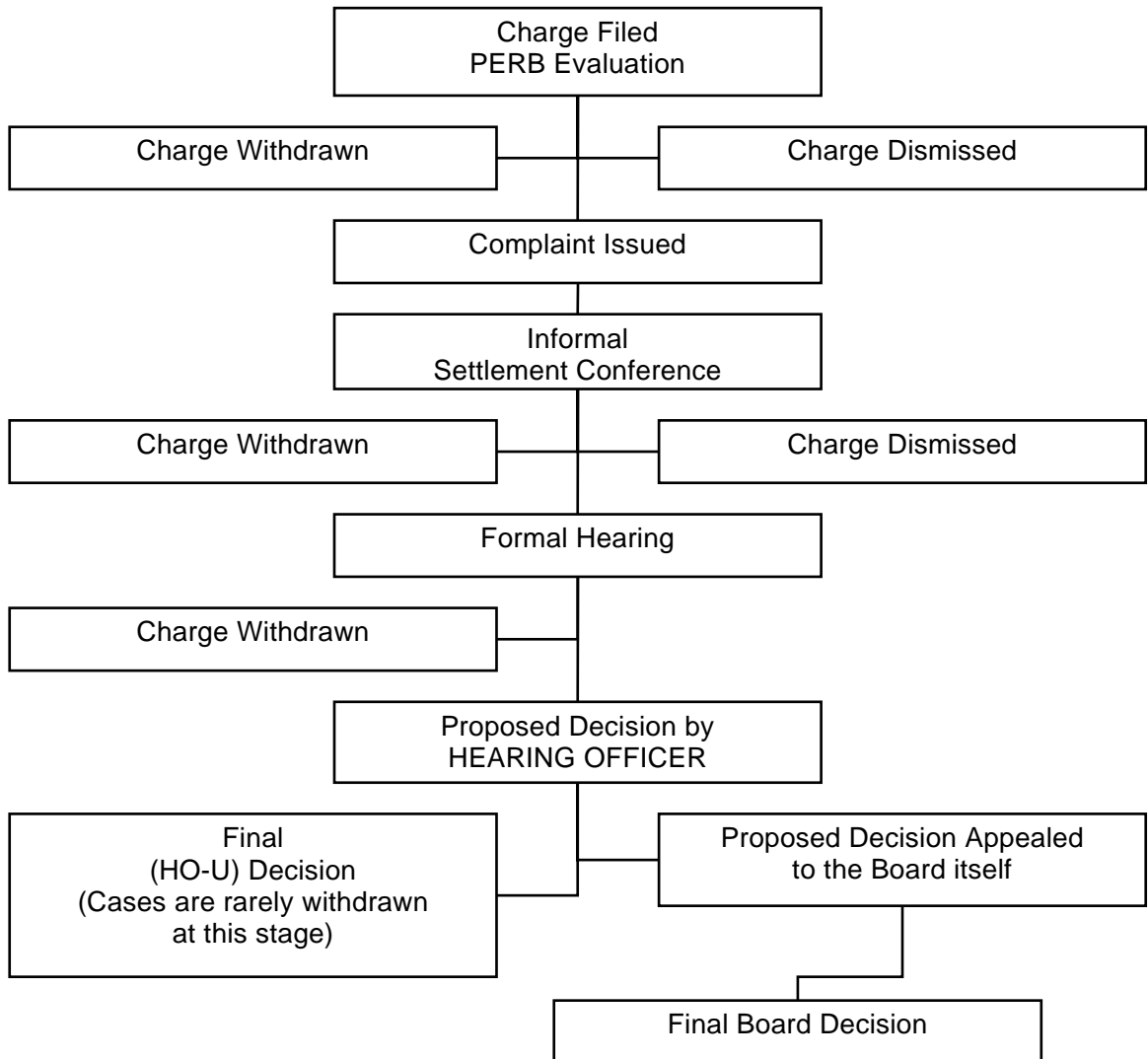
Election activity decreased slightly compared to the prior year (14 compared to 16) and continued a general decline from historical averages. There were 1 representation, 1 severance, 9 decertification, and 2 organizational security rescission elections.

V. APPENDICES

PUBLIC EMPLOYMENT RELATIONS BOARD
Organizational Chart



UNFAIR PRACTICE CHARGE FLOW CHART



2005-2006 REPRESENTATION CASE ACTIVITY

I. Case Filings and Disposition Summary

Case Type	Filed	Closed
Request for Recognition	30	25
Severance	7	7
Petition for Certification	3	3
Decertification	12	14
Amended Certification	2	3
Unit Modification	39	31
Organizational Security	2	2
Petition for Board Review (MMBA)	2	3
Financial Statement	0	1
Public Notice	2	2
Arbitration	1	1
Mediation	207	139
Factfinding	38	38
Compliance	15	19
Totals	360	288

II. Prior Year Workload Comparison: Cases Filed

	2002-2003	2003-2004	2004-2005	2005-2006	4-Year Average
Fiscal Year	304	338	361	360	341

III. Elections Conducted

Decertification	10
Organizational Security Approval	0
Organizational Security Rescission	2
Representation	1
Severance	1
Unit Modification	0
Total	14

Elections Conducted: 7/1/2005 to 6/30/2006

<i>Case No.</i>	<i>Employer</i>	<i>Unit Type</i>	<i>Winner</i>	<i>Unit Size</i>
<i>Decertification</i>		<i>Subtotal:</i>	<i>10</i>	
LA-DP-00349-E	SAN DIEGO COMMUNITY COLLEGE DISTRICT	Naval Tech Training Instructors (San Diego)	AFT Local 1931	90
LA-DP-00350-E	MARICOPA USD	Wall Classified	CSEA-Chapter 686	26
SA-DP-00216-S	STATE OF CALIFORNIA	Protective Services & Public Safety	CAUSE Statewide Law Enforcement Association	6658
LA-DP-00352-E	GROSSMONT-CUYAMACA CCD	Wall Classified	CSEA Chapter 707	389
SF-DP-00262-H	UNIVERSITY OF CALIFORNIA	UC Los Angeles Skilled Crafts	SETC United	568
SA-DP-00219-S	STATE OF CALIFORNIA	Health & Social Service Professionals	AFSCME Local 2620	4174
LA-DP-00353-E	ALTA LOMA ELEMENTARY SCHOOL DISTRICT	Wall Classified	No Representation	444
LA-DP-00354-E	COPPER MOUNTAIN CCD	Wall Classified	CSEA Chapter 800	34
SA-DP-00221-E	YOLO COE	Children's Center	AFSCME Local 146	51
<i>Organizational Security - Rescission</i>		<i>Subtotal:</i>	<i>2</i>	
SF-OS-00195-E	MENDOCINO-LAKE CCD	Wall Classified	Not rescinded	83
LA-OS-00216-E	ALTA LOMA ELEMENTARY SCHOOL DISTRICT	Wall Classified	Not rescinded	441
<i>Representation</i>		<i>Subtotal:</i>	<i>1</i>	
SA-RR-01070-E	SAN JUAN UNIFIED SCHOOL DISTRICT	Certificated Supervisors	San Juan Professional Educators Coalition	170
<i>Severance</i>		<i>Subtotal:</i>	<i>1</i>	
LA-SV-00144-E	LOS ANGELES UNIFIED SCHOOL DISTRICT	Other Classified Supervisors	Los Angeles School Police Sergeants & Lieutenants Assn.	44

Total Elections: 14

2005-2006 UNFAIR PRACTICE CHARGE STATISTICS

I. Unfair Practice Charges Filed by Region

Region	Total
Sacramento	276
San Francisco	296
Los Angeles	<u>440</u>
Total	1012

II. Unfair Practice Charges Filed by Act

Act	Total
Dills Act	113
EERA	297
HEERA	328
MMBA	254
TEERA	1
Trial Court Act	5
Court Interpreter Act	<u>11</u>
Non-Jurisdictional	<u>3</u>
Total	1012

III. Prior Year Workload Comparison: Charges Filed

	2002/2003	2003/2004	2004/2005	2005/2006	4-Year Average
Total	802	835	870 ²	1012	880

IV. Unfair Practice Charge Dispositions by Region

	Charge Withdrawal	Charge Dismissed	Complaint Issued	Total
Sacramento	81	83	150	314
San Francisco	91	105	122	318
Los Angeles	<u>247</u>	<u>124</u>	<u>219</u>	<u>590</u>
Total	419	312	491	1222

² The number of charges shown for 2004-2005 is adjusted to discount 256 identical charges filed by a single group of employees. The raw number of filings was 1,126.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1773	Sacramento City Unified School District and Classified Supervisors Association	Exceptions filed to a hearing officer's proposed decision where underlying unfair practice charge alleged that the classifications of other supervisory position in the district shared a community of interest with a manager position which was created after the district moved to a new headquarters. The charge also alleged that classifying the new position as a management position was a violation of EERA.	The Board denied the petition to modify the bargaining unit to include the manager classification to the Operational Support Supervisors unit. Where the manager position at district headquarters has authority to exercise independent judgment and there is no community of interest with school site cafeteria managers, the job is a management position exempt from the Operational Support Supervisors unit.
1774-M	Richardo Paez v. SEIU Local 790	Charge alleged that SEIU Local 790 violated the Meyers-Milias-Brown Act by its failure to meet its duty of fair representation.	The Board dismissed the charge. The union provided charging party with an attorney, who presented witnesses and evidence on his behalf, and who vigorously cross-examined the city's witnesses. The fact that the union did not introduce every document charging party deemed favorable or raised every argument deemed significant did not breach the duty of fair representation. Further, the union did not breach its duty of fair representation by refusing to represent charging party at the Civil Service Hearing because an exclusive representative does not owe a duty of fair representation to unit members in a forum over which the union does not exclusively control the means to a particular remedy.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1775	Standard School District v. Standard Teachers Association, CTA/NEA	The District alleged that the Association unilaterally changed a negotiated policy when it refused to participate in the local peer assistance and review (PAR) program.	The Board found a violation in that the association unilaterally changed policy by refusing to participate in the PAR program. PAR is within the scope of representation under EERA section 3543.2(a) and the Anaheim test in that it is logically and reasonably related to the terms and conditions of employment. (1) A local PAR program is related to evaluation procedures. (2) The Legislature required a school district to negotiate a local PAR Program. (3) Negotiating a local PAR program would not significantly intrude upon a union's managerial prerogative.
1776	Patricia O'Neil, Ernest Salgado, Emil Barham v. Santa Ana Educators Association	Charge alleged that the Santa Ana Educators Association violated the Educational Employment Relations Act by denying them an opportunity to participate in union activity and failing to meet its duty of fair representation.	The Board remanded the case for further investigation at the request of the PERB General Counsel because the charging parties asserted that they did not receive a warning letter prior to the case being dismissed as required under PERB Regulation 32620(d).
1777	King City High School Teachers Association, CTA/NEA v. King City Joint Union High School District	The complaint alleged that the district unilaterally changed the policy related to the calculation of salary increases based on a revenue sharing formula established in the collective bargaining agreement. The complaint also alleged that the district failed and refused to provide requested information related to the calculation of salary increases.	The Board held that the district violated EERA by unilaterally including non-unit teachers in the salary increase formula and by unilaterally excluding non-restricted revenue sources from the salary formula. The Board dismissed the allegation that the district refused to provide the association with requested information.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1778	California School Employees Association & its Chapter 347 v. Klamath-Trinity Joint Unified School District	Charge alleged that the district discriminated against the chapter president by eliminating her position, unilaterally transferring her duties from one classification to other classifications, and failing or refusing to provide requested information.	The Board dismissed the unfair practice charge finding that there is no nexus between protected activity (union chapter president) and adverse action (decision to eliminate position and to lay off employee), to demonstrate a prima facie case of discrimination. Where an exclusive representative has received notice of the decision, the employer's failure to give formal notice is of no legal import. Absent any evidence that clarification was sought by union, or that information was incomplete, the district did not fail to provide requested information. The district had no obligation to meet and negotiate its decision to transfer duties from the abolished classification to other classifications.
1779-M	San Francisco Institutional Police Officers' Association v. City & County of San Francisco	Association's appeal of a Board agent's dismissal of its unfair practice charge where it was alleged that city and county violated MMBA by unilaterally changing past practices.	The Board remanded the charge to PERB's Office of the General Counsel for further investigation at the request of the General Counsel.
1780-M	Mr. & Mrs. Willie Coleman, Jr. v. Public Employees Union Local 1	The unfair practice charge alleged that the union breached its duty of fair representation in its handling of a grievance.	The Board held that the duty of fair representation was not breached where the grievance pursued for more than two years and resolved benefited classification as a whole. No good cause shown for late filing based on ignorance of the law.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1781	Thomas Joseph Chambers v. United Teachers of Los Angeles	Charge alleged that United Teachers of Los Angeles violated the EERA by its failure to meet its duty of fair representation.	The Board dismissed the charge because charging party failed to demonstrate that respondent's conduct was arbitrary, discriminatory, or in bad faith.
1782-C	Eva M. Keiser v. Lake County Superior Court	The Board dismissed an unfair practice charge in which the charging party alleged numerous violations of the Trial Court Act, including the denial of due process under Article 5, a wrongful placement in an employee group, discrimination and failure to meet and confer.	The Board held it lacked jurisdiction to enforce due process violations in connection with disciplinary decisions under Article 5 of the Trial Court Act. In addition, the Board held the charging party, as a private individual, lacked standing to pursue an alleged meet and confer violation by the employer. The Board also held the charging party failed to establish a prima facie case of discrimination because she failed to demonstrate a nexus between the adverse action and the protected conduct. Last, with regard to the wrongful placement issue, the Board held the charge was not timely filed.
1783-M	County of Inyo v. United Domestic Workers of America	The charge alleged that the union failed to negotiate in good faith.	The Board reversed the dismissal and found the employer had stated a prima facie case of violation of the MMBA by the union and directed a complaint to issue. The Board held that the union's negotiator tried to circumvent employer's negotiator contrary to the ground rules and refused to negotiate.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1784-H	Stephanie Abernathy, Carolyn G. Lem, Xiaoqing Qu v. UPTE, CWA Local 9119	Charges filed in these cases by Werner Witke on behalf of the parties alleged that UPTE violated HEERA by collecting agency fees prior to providing Hudson notices to nonmembers and benefiting from an interest free loan at their expense for the period between collection and refund of the challenged agency fees. The charges also alleged that this is a violation of PERB regulations which requires that written notice be sent to nonmembers at least 30 days prior to collection of agency fees and fees subject to objection be placed in an escrow account.	The unfair practice charges were remanded to the PERB General Counsel's Office for a complaint to issue. The Board held that agency fee payers have standing to challenge violation of PERB Regulation 32992 and there is harm in violating regulation that is separate from any harm that is remedied by returning fees. Where there is a material factual dispute, the charging party's allegations must be accepted as true.
1785-H	Rodney N. Trout and Kathy Aldern v. University Professional & Technical Employees	Charging parties requested that the Board grant their request to withdraw their appeals of the Board agent's dismissal of their unfair practice charges.	At the parties' request, the Board granted the withdrawal as consistent with the governing statute and in the best interests of the parties.
1786	California School Employees Association & its Chapter 549 v. Tamalpais Union High School District	The Board granted a request by the parties to withdraw an appeal of a dismissal.	The Board may grant a request to withdraw an appeal of a dismissal and the underlying charge based upon the joint resolution of the issues by the parties, provided it is in the best interests of the parties and consistent with the purposes of EERA.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1787	Alethea J. Thomas v. Los Angeles Unified School District	Complaint alleged retaliation against charging party by releasing her from assignment with the district.	Charge dismissed for failure to state a prima facie case of retaliation. The Board found that the district was aware when charging party engaged in various protected activity but found no evidence of nexus to support a finding of retaliation against her. The district's conduct did not support the element of unlawful motive.
1788-H	Academic Professionals of California v. Trustees of the California State University	Charge and complaint alleged that California State University unilaterally implemented various computer use policies at several campuses as well as a telephone policy at the San Luis Obispo campus.	The Board allowed Academic Professionals of California and Trustees of the California State University to withdraw their exceptions to the proposed decision because the parties developed a mutually satisfactory resolution of the issues.
1789-H	Academic Professionals of California v. Trustees of the California State University	Academic Professionals of California (APC) and California State University (CSU) jointly requested to withdraw the appeal because the parties mutually agreed to resolve the charge.	The Board granted the joint request of APC and CSU.
1790-S	Eric Jon Quigley v. Stationary Engineers Local 39	Charge alleged that the Stationary Engineers Local 39 violated the Ralph C. Dills Act by breaching its duty of fair representation when it failed to file grievances on his behalf and denied his request for representation before the State Personnel Board.	The Board dismissed the charge. All allegations, but one were untimely. In regards to the remaining allegation, an exclusive representative does not owe a duty of fair representation to unit members in a forum over which the union does not exclusively control the means to a particular remedy.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1791	John Kahn v. Los Angeles Unified School District	The charge alleged the district discriminated against charging party and interfered with his rights by requiring that he submit a completed log book and to remain in the electrical shop until his supervisor figured out how to respond to his refusal to turn over the log book.	Unfair practice charge dismissed where the Board found charging party's refusal to hand over book is not protected conduct. It was found that the supervisor's directives do not constitute threats or state a prima facie case for interference or discrimination. Charging party's situation is distinguishable from Compton USD (2003) PERB Dec. No. 1518 which confirms the district's actions were not an adverse action.
1792-H	Kathy Aldern, et al. v. UPTE, CWA Local 9119	Aldern, et al. are parties in unfair practice charges filed by Werner Witke on behalf of numerous individuals. The charges alleged that UPTE violated HEERA by collecting agency fees prior to providing Hudson notices to nonmembers and benefiting from an interest free loan at their expense for the period between collection and refund of the challenged agency fees. The charges also alleged that this is a violation of PERB regulations which require that written notice be sent to nonmembers at least 30 days prior to collection of agency fees and fees subject to objection be placed in an escrow account.	The unfair practice charges were remanded to the PERB General Counsel's Office for a complaint to issue and consolidation with numerous other charges. Just as in UPTE (Abernathy, et al.), PERB Decision No. 1784-H, the Board held that agency fee payers have standing to challenge violation of PERB Regulation 32992 and there is harm in violating regulation that is separate from any harm that is remedied by returning fees. Where there is a material factual dispute, the charging party's allegations must be accepted as true.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1793-H	Leslie Diane Abrams Carter, et al. v. UPTE, CWA Local 9119	The unfair practice charges filed by Carter, et al. are the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charges to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1794-H	Leanne Gill, et al. v. UPTE, CWA Local 9119	The unfair practice charge filed by Gill, et al. are the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charges to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1795-H	Francisco Chanes, et al. v. UPTE, CWA Local 9119	The unfair practice charges filed by Chanes, et al. are the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charges to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1796-H	Gregory F. Welch and Julie B. Blix v. UPTE, CWA Local 9119	The unfair practice charges filed by Welch and Blix are the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charges to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1797-H	Sharon Boylan v. UPTE, CWA Local 9119	The unfair practice charge filed by Boylan is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1798-H	Nicolette Van Sluis v. UPTE, CWA Local 9119	The unfair practice charge filed by Van Sluis is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1799-H	Janice Hatchell Cooper v. UPTE, CWA Local 9119	The unfair practice charge filed by Cooper is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1800-H	Ivan B. Lee v. UPTE, CWA Local 9119	The unfair practice charge filed by Lee is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1801-H	Christine E. Joshel v. UPTE, CWA Local 9119	The unfair practice charge filed by Joshel is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1802-H	Lana Widman v. UPTE, CWA Local 9119	The unfair practice charge filed by Widman is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1803-H	Robert Leslie Brooks v. UPTE, CWA Local 9119	The unfair practice charge filed by Brooks is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1804-H	Randolph D. Rock v. Regents of the University of California	The Board dismissed the unfair practice charge which alleged the university failed to reclassify charging party's position because of his protected activity.	The Board found the charging party failed to sufficiently allege a prima facie case of retaliation or interference.
1805	Janice M. Abner v. Compton Unified School District	Charge alleged the Compton Unified School District retaliated against charging party for engaging in protected activities.	The Board dismissed the charge because charging party failed to demonstrate that the district took adverse action against her because of the exercise of rights.
1806-S	William F. Horspool v. State of California (Department of Corrections)	An administrative law judge sua sponte dismissed charging party's complaint for failure to prosecute.	The Board affirmed the ALJ's dismissal. The Board held that an ALJ can dismiss a complaint sua sponte for lack of prosecution. The Board found that charging party failed to demonstrate good cause as to why his complaint should not be dismissed.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1807-M	Paul Mauriello v. Bay Area Air Quality Management District	Charge alleged that the Bay Area Air Quality Management District (District) violated the MMBA by failing to follow the grievance procedure outlined in the memorandum of understanding between the District and the Bay Area Quality District Employees Association.	The Board dismissed the unfair practice charge finding that dismissal of a grievance as untimely, absent other facts, does not demonstrate that the District interfered with, restrained, or coerced the exercise of protected rights; that the District could not have denied employee the right to be represented when he did not request representation; and that individual employees do not have standing to allege unilateral change violations nor allege violations of the collective bargaining rights of employee organizations.
1808-M	Paul Mauriello v. Bay Area Air Quality Management District Employees Association	Charge alleged that the Bay Area Air Quality Management District Employees Association (Association) violated the MMBA by failing to represent employee at pre-termination hearing (Skelly) and failing to provide him representation and/or assistance with two grievances.	The Board dismissed the charge finding that absent any evidence that the Association's decisions were discriminatory, arbitrary or in bad faith, it fulfilled its obligation to explain decision for non-representation at grievance proceedings; and that since the arbitration award is new evidence that was not available when charge was initially filed, it may be considered on appeal. Favorable arbitration award does not imply the Association acted in an arbitrary, discriminatory, or bad faith manner when denying representation to employee.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1809-M	SEIU Local 535 v. County of Madera	The Board granted a request by the parties to withdraw an appeal of a dismissal.	The Board granted charging party's request to withdraw unfair practice charge upon finding that request was in best interests of the parties and was consistent with the purposes of MMBA.
1810-H	Felicita E. Baratelli v. UPTE, CWA Local 9119	The unfair practice charge filed by Baratelli is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1811-H	Gayle Marie Crisosto v. UPTE, CWA Local 9119	The unfair practice charge filed by Crisosto is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)
1812-H	Kathy R. Bailey v. UPTE, CWA Local 9119	The unfair practice charge filed by Bailey is the same as in a number of charges filed by Werner Witke on behalf of numerous individuals regarding UPTE's collection of agency fees. (See PERB Decision No. 1792-H.)	The Board remanded the charge to the General Counsel's Office for a complaint to issue and consolidation with numerous other charges. (See PERB Decision No. 1792-H.)

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1813-H	Corneliu Sarca v. California State Employees Association	Sarca appealed Board agent's partial dismissal of his unfair practice charge and excepted to an administrative law judge's proposed decision on portion of charge where complaint was issued. The charge alleged that the association denied Sarca the right to challenge the calculation of the 2003-2004 agency fee, incorrectly calculating the agency fee and denied him a fair arbitration hearing. Sarca alleged that the union was collecting non-chargeable agency fees and maintaining a surplus of funds.	The Board dismissed the charge and complaint holding that paying agency fees in prior year does not give an employee standing to object to agency fees based on the belief that union is collecting non-chargeable fees and maintaining a surplus of funds in a year where no agency fees are accepted. The Board deferred to agency fee arbitration award because (1) proceedings were fair and regular, (2) decision of arbitrator was not clearly repugnant to purposes of HEERA.
1814-S	Michael Samuel Pittman v. CDF Firefighters	The unfair practice charge alleged that the union violated the Dills Act by a former president's interference with Pittman's right to pay dues, telling him that the union was unable to process his membership unless deductions were made from his paycheck and canceling his membership during the appeal of his termination. The charge also alleged that the current president interfered with Pittman's pursuit of the charges against the former president and allowing the Hearing Committee to retaliate against him for filing the charge, the Hearing Committee interfering with Pittman's rights by removing him as a director of the San Benito-Monterey Chapter and expelling him from membership for filing internal charges against the former president.	The Board dismissed the charge for failure to state a prima facie case as to each of the allegations. In discrimination charges filed against employee organizations based on internal union activity, the charge must demonstrate that the internal union conduct had an impact on employer-employee relations. In addition, the adverse action taken by the employee organization must have some impact on employer-employee relations. The charge failed to demonstrate that there was any impact on employer-employee relations.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1815-S	Michael Samuel Pittman v. CDF Firefighters	The unfair practice charge alleged that the union violated the Dills Act by imposing an illegal trusteeship, having internal union charges filed against him, having facts ignored and imposing inappropriate penalties at a committee proceeding; having its attorneys file false police reports, and having a report submitted which alleged a violation of the Penal Code.	The Board dismissed the charge for failure to state a prima facie case as to each of the allegations. In discrimination charges filed against employee organizations based on internal union activity, the charge must demonstrate that the internal union conduct had an impact on employer-employee relations. In addition, the adverse action taken by the employee organization must have some impact on employer-employee relations. The charge failed to demonstrate that there was any impact on employer-employee relations.
1816-M	SEIU Local 399 v. Antelope Valley Health Care District	The Board dismissed the unfair practice charge which alleged unlawful refusal to recognize SEIU as the executive representative after a card check.	The Board found that the district unreasonably withheld recognition from the union as the exclusive representative for the unit of "all other employees." Specifically, the Board concluded that the district withheld recognition by treating the "No Union" slips as revoking the SEIU authorization cards. The "No union" slips do not show the signers' intent to revoke the authorization cards and thus should not be deducted from the unions tally.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1817-H	Kerry Jean Nickols , et al. v. UPTE, CWA Local 9119	The unfair practice charges alleged that UPTE violated HEERA by sending out a defective Hudson notice.	The Board affirmed the partial dismissal of these charges and held that agency fee questions regarding the credibility of amounts listed as chargeable or non-chargeable are not for an auditor to decide but must be addressed by timely objection after receipt of Hudson notice and timely request for arbitration hearing on accurate determination of chargeability.
1818-H	Mary Margaret Hawley, et al. v. UPTE, CWA Local 9119	The unfair practice charges alleged that UPTE violated HEERA by sending out a defective Hudson notice.	The Board affirmed the partial dismissal of these charges and held that agency fee questions regarding the credibility of amounts listed as chargeable or non-chargeable must be addressed by timely objection after receipt of Hudson notice and timely request for arbitration hearing on accurate determination of chargeability.
1819-H	Olivia Jimenez-Newby v. UPTE, CWA Local 9119	The unfair practice charge alleged that UPTE violated HEERA by sending out a defective Hudson notice.	The Board affirmed the partial dismissal of this charge and held that agency fee questions regarding the credibility of amounts listed as chargeable or non-chargeable must be addressed by timely objection after receipt of Hudson notice and timely request for arbitration hearing on accurate determination of chargeability.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1820-H	Orna Yaron v. UPTE, CWA Local 9119	The unfair practice charge alleged that UPTE violated HEERA by sending out a defective Hudson notice.	The Board affirmed the partial dismissal of this charge and held that agency fee questions regarding the credibility of amounts listed as chargeable or non-chargeable must be addressed by timely objection after receipt of Hudson notice and timely request for arbitration hearing on accurate determination of chargeability.
1821-H	Mark Ball v. UPTE, CWA Local 9119	The unfair practice charge alleged that UPTE violated HEERA by sending out a defective Hudson notice.	The Board affirmed the partial dismissal of this charge and held that agency fee questions regarding the credibility of amounts listed as chargeable or non-chargeable must be addressed by timely objection after receipt of Hudson notice and timely request for arbitration hearing on accurate determination of chargeability.
1822	Santee Teachers Association v. Santee Elementary School District	The unfair practice charge alleged that the district unilaterally changed its policy pertaining to concerted activities and adopted regulations to implement the policy without giving the union prior notice or opportunity to bargain.	The Board found that the union made a reasoned decision not to demand to bargain the adoption of the district's board policy; therefore the union waived the right to negotiate. However, the union did not waive the right to bargain the impacts of the policy. In addition, two unalleged interference violations were found.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1823-H	California Faculty Association v. Trustees of the California State University	Charge alleged violation by conditioning agreement on the parties' memorandum of understanding on the waiver of a statutory right.	The Board held that it is a violation of HEERA for the university to insist to impose on a proposal limiting the remedial authority of an arbitrator in faculty disputes as this unlawfully conditions agreement on waiver of a statutory right. A heightened standard of review cannot be imposed on an arbitrator by the parties in their collective bargaining agreement or memorandum of understanding.
1824-M	Alameda County Probation Peace Officers Association v. County of Alameda	Partial dismissal of the unfair practice charge appealed. The charge alleged a violation of the MMBA when unilateral changes to eliminate certain holidays were made and surface bargaining.	The Board remanded the charge to the PERB Office of the General Counsel for further investigation where some allegations of charge were not addressed by the Board agent.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1825-M	SEIU, Local 1997 v. County of Riverside	The charge alleged unilateral change in a policy concerning processing of pending grievances that were also the subject of unfair practice charges at PERB, without providing the union with notice and an opportunity to bargain.	The Board found a unilateral change where the parties had negotiated and adopted a mutually agreeable process to resolve disputes over the grievability of the subject matter of grievances. The county was found in violation of MMBA when it refused to abide by the language and refer issues of grievability to the State Mediation and Conciliation Service on 7 to 10 grievances not including the one forming the basis of the charge. Also, to address the unalleged violations, all four requirements of Tahoe-Truckee USD (1988) PERB Dec. No. 668 must be met. In this case, the four requirements were not fully discussed to provide a clear rationale for discussing issued not found in the complaint.
1826-S	Julia R. Zanchi v. State of California (Department of Corrections)	Charge alleged the department's violation of the Dills Act by its retaliation against an employee because of a grievance filed.	The Board found no prima facie case where there is insufficient nexus between denial of promotional opportunities and protected activity of filing a grievance. State of California (Department of Corrections (2003) PERB Decision No. 1579-S is vacated.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1827	Los Angeles School Police Association v. Los Angeles Unified School District	The Board upheld the dismissal of an unfair practice charge in which the charging party alleged the District violated EERA when it changed its past practice by contracting out bargaining unit work during District high school football games.	The Board held when unit employees and non-unit employees have traditionally performed overlapping duties, an employer does not commit an unlawful unilateral change when it changes the ratio of work performed by these employees. Accordingly, the District did not commit an unlawful unilateral change when it increased the quantity of work performed by the non-unit employees and decreased the amount of work performed by the unit employees.
1828	George Gary Casper v. Los Banos Unified School District	Charge alleged that Los Banos Unified School District violated the Educational Employment Relations Act by withholding Casper's wages while he was involved in a grievance with the District and by knowingly providing an exclusive representative with inaccurate information.	The Board dismissed the charge because Charging Party failed to establish that he engaged in protected conduct.
1829-H	Kaye Saurer Hermanson, et al. v. UPTE, CWA Local 9119	Charges alleged that UPTE failed to timely request an impartial hearing regarding the agency fee amount after charging parties timely objected to the amount indicated in the notice sent by UPTE.	The unfair practice charges were remanded to the PERB General Counsel's Office for a complaint to issue. The Board held that the Board agent acted outside of its scope of duties and outside the Board's jurisdiction in allowing exclusive representative to change timeline set forth for filing objections in PERB Regulation 32994(b)(3).

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1830-H	Rodney N. Trout v. UPTE, CWA Local 9119	The charge alleged that UPTE violated HEERA and PERB Regulation 32994(b)(3) by collecting agency fees from an agency fee payer objector while failing to request an agency fee hearing within 45 days of the last day for filing an objection to the fees.	Under PERB Regulation 32994(b)(3) the union is required to request agency fee hearing within 45 days of the last date employees may object to the non-chargeable fees set forth in the annual written notice outlining chargeable and non-chargeable expenses. The unfair practice charge was remanded to the PERB General Counsel's Office for a complaint to issue.
1831-H	Marcia C. Booth, et al.v. UPTE, CWA Local 9119	The unfair practice charges alleged that UPTE failed to timely request an impartial hearing regarding the agency fee amount after charging parties timely objected to the amount indicated in the notice sent by UPTE.	The charges were remanded to the PERB General Counsel's Office for a complaint to issue. The Board held the Board agent had acted outside the scope of duties and the Board's jurisdiction in allowing exclusive representative to change timeline set for filing objections in PERB Regulation 32994(b)(3).
1832-H	State Employees Trades Council United v. Regents of the University of California (San Diego)	The charged alleged transfer of bargaining unit work out of the unit, and refusing to meet and confer in good faith about the transfer.	The Board affirmed the partial dismissal and held that for a prima facie case bad faith bargaining due to transfer of work charge must establish that the bargaining unit has ceased performing any work that was previously assigned exclusively to it.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1833	Victoria Heggem v. Arcadia Teachers Association	Heggem alleged that the Association violated her rights by requiring her to make a charity substitution payment in an amount equal to dues paid by voluntary members of the union, including the imposition of a \$60.00 temporary dues assessment for at least the next three years.	The Board dismissed the charge determining that religious objectors and agency fee payers/objectors are not similarly situated classes. There is no statutory requirement that religious objectors be given an annual notice or that they are entitled to a reduced agency fee.
1834	Adrian Maaskant v. Kern High Faculty Association, CTA/NEA	Charge alleged withholding of non-chargeable fees; withholding of information regarding collective bargaining; exclusion from providing input and voting on the collective bargaining agreement; and improperly categorizing non-chargeable expenditures, thereby violating the duty of fair representation.	The Board dismissed the charge finding that it is not a violation for a union to withhold information as long as there are notice and an opportunity to be heard before a collective bargaining agreement becomes final. A union may exclude non-members from voting as long as the union provides them with an opportunity to communicate their views.
1835-S	Donald Wayne Kunkel v. State of California (Department of Transportation)	The Board upheld the dismissal of an unfair practice charge in which the charging party alleged he was unjustly terminated from State service and subjected to continued harassment.	The Board held the unfair practice charge, which was filed nearly two years after the charging party's termination, was not timely filed. The Board further held the charging party was not a "State employee" under Government Code section 3513(c) and, therefore, lacked standing to invoke the protections of the Dills Act.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1836-S	California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California (Department of Personnel Administration)	The charge alleged that the state violated the Dills Act by failing and refusing to bargain in good faith.	The Board dismissed the charge as no prima facie showing of bad faith or surface bargaining where state asked to revisit tentative agreements.
1837-M	Siskiyou County Employees' Association v. County of Siskiyou	The Board dismissed an unfair practice charge in which the charging party alleged the County of Siskiyou violated a past practice of reimbursing employees for the costs of licensing examinations.	The Board held the unfair practice charge, which was filed outside of the six month statutory period, was not timely filed.
1838-M	Richard Valentine Modic, Jr. v. Sacramento Municipal Utility District	The Board upheld the dismissal of an unfair practice charge in which the charging party alleged he was discriminated against for engaging in protected activities.	The Board held the charging party failed to allege facts sufficient to demonstrate a nexus between the adverse action and the protected activity. The Board also held an amendment to an unfair practice charge is not timely if filed after the issuance of a dismissal.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1839-H	California State Employees Association v. Trustees of the California State University	Charge alleged that the Trustees of the California State University violated the Higher Education Employer-Employee Relations Act by unilaterally changing its contracting out policy when it entered into an operating agreement with an auxiliary organization to provide for the management of on-campus student housing and related custodial services.	The Board found that Respondent was not obligated to give Charging Party notice and opportunity to bargain regarding the effects of its decisions to form a Corporation or to enter into the operating agreement because Charging Party failed to present evidence that any unit employee was laid off, lost work hours, or was otherwise affected by the existence or operation of the Corporation. Additionally, Charging Party failed to present any evidence that Respondent should have anticipated such a result.
1840-M	Health Services Agency Physicians Association v. County of Santa Cruz	The Board dismissed the unfair practice charge where it was alleged that the county failed to cease dues deductions for a different union and begin them for the association in a timely manner.	The Board held that a two week delay in implementing dues deduction does not appear unreasonable and does not violate MMBA. Additionally, there is no prima facie case where no facts are provided to indicate any attempt to interfere with internal union politics or sway favor away from exclusive representative.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1841-M	Stationary Engineers Local 39 v. City of Fresno	The charge alleged a violation by the city's engaging in bad faith bargaining through bypassing the exclusive representative and dealing directly with bargaining unit employees, refusing to bargain, surface bargaining, withholding information and unlawfully declaring impasse.	The partial dismissal of the unfair practice charge was affirmed. The Board held that no interference was found where a survey of employees is an attempt to elicit information and nothing more, and union failure to show letter from city to employees impinged on reasonable employees exercise of protected rights. Surface bargaining was not found where city has reasonable basis for position and allegations taken as a whole do not present prima facie case.
1842-H	Academic Professional of California v. Trustees of the California State University	The union alleged a unilateral change in the method for reporting sick leave and vacation credits from one hour increments to one-half hour increments. It was further alleged that this was a breach of the duty to negotiate in good faith.	The Board dismissed the charge holding that the change in method for reporting sick leave and vacation credits is not a breach of the duty to negotiate in good faith where parties disagreed as to where negotiations should take place. The obligation to negotiate in good faith does not require yielding of a position fairly maintained.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1843-H	Coalition of University Employees, Local 6 v. Regents of the University of California	Charge alleged that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act by interfering with the right to union representation in a meeting with a supervisor, failing to timely schedule a subsequent meeting, issuing a "Performance Improvement Notice," and docking pay.	The Board dismissed the charge because Charging Party failed to establish protected activity. Additionally, Charging Party failed to allege that a request for union representation was made and denied.
1844	Adrian Pieter Maaskant v. Kern High Faculty Association, CTA/NEA	The Board dismissed an unfair practice charge in which the charging party alleged the union violated EERA when it permitted the charging party, an agency fee payer, to pay in full the annual union dues lump-sum, rather than the entire amount less the non-chargeable expenditures.	The Board held the charging party had standing to assert his claim. The Board further held a union does not violate EERA when it collects the entire amount of annual union dues and later rebates the non-chargeable expenses with interest to the agency fee payer.
1845	Virgilio Neves Cardoso v. Teamsters Local 228	Cardoso alleged that the Teamsters Local 228 violated its duty of fair representation when it failed to assist him in filing an unfair practice charge with PERB in a prior case.	The Board dismissed the unfair practice charge for failing to state a prima facie case holding that an employee organization is not obligated under the duty of fair representation to assist an employee in filing or appealing an unfair practice charge before PERB.

2005-2006 DECISIONS OF THE BOARD

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
1846-S	Vallabhaneni Meenakshi, et al. v. Union of American Physicians & Dentists	The Board upheld the dismissal of an unfair practice charge in which the charging party alleged the union violated the Dills Act when it failed to negotiate specific gains for psychiatrists.	The Board held the charging party's dissatisfaction with the union's bargaining strategy was insufficient to establish a prima facie case.
1847	Burlingame Elementary School District and California School Employees Association	The unit modification petition filed by the district asked for removal of the classification of benefits/payroll specialist from the bargaining union and maintain it as a confidential position.	The Board denied the request where position sought to be excluded does not meet definition of confidential employee as delineated in EERA section 3540.1(c).

2005-2006 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
Ad-350-H	Academic Professionals of California v. Trustees of the California State University	The university filed exceptions to a ruling by a PERB Board agent that it failed to comply with the posting requirements of an order accompanying an administrative law judge's proposed decision, the substance of which was not challenged.	The Board held that where a dispute as to compliance is resolved by the parties, it is appropriate to grant withdrawal of exceptions which were filed related to compliance. The administrative law judge's proposed decision was not affected.
Ad-351-H	Corneliu Sarca v. California State University Employees Union, SEIU Local 2579, CSEA	The Board upheld the dismissal of a petition to compel in which the petitioner alleged the union failed the information required by Government Code section 3587. The petitioner also alleged the union's agency fee calculation was erroneous.	The Board held dismissal of a petition to compel is appropriate when the responding party provides the petitioner with the requested information. The Board further held petitions to compel are not appropriate mechanisms to challenge agency fee calculations; rather, such challenges are governed by PERB Regulation 32994.
Ad-352	Rickey A. Jones v. SEIU Local 99	A motion was brought by Jones that the Board accept late-filed exceptions to an administrative law judge's proposed decision. The unfair practice charge alleged that the union violated its duty of fair representation.	The Board granted charging party's motion. Where exceptions were filed late due to error at PERB, there is good cause to accept late-filed documents.
Ad-353-H	Coalition of University Employees, Local 6 v. Regents of the University of California (San Francisco)	Appeal of a Board determination that the union's filing of an appeal of a Board agent's dismissal of its unfair practice charge was untimely.	The Board did not find good cause existed to accept late filing based on unspecified reference to postal or clerical error without justification being given or authority for position cited.

2005-2006 DECISIONS OF THE BOARD

ADMINISTRATIVE DETERMINATIONS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
Ad-354	Newark Teachers Association, CTA/NEA v. Newark Unified School District/Newark Unified School District v. Newark Teachers Association, CTA/NEA	Request was filed by the association to accept it's late-filed response to exceptions to an administrative law judge's proposed decision for good cause.	The Board held that good cause existed to grant the request where the response was filed at incorrect PERB office due to clerical error, but a delay in reaching correct office timely was due to internal handling at PERB.

2005-2006 DECISIONS OF THE BOARD

JUDICIAL REVIEW REQUESTS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
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There were no Requests for Judicial Review that were considered by the Board this fiscal year.
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2005-2006 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 485	California Nurses Association v. Regents of the University of California	CNA sought to enjoin the University from engaging in bad faith bargaining and unlawfully retaliating against bargaining unit members who participated in a sympathy strike.	Request Denied.
I.R. 486	California Department of Veterans Affairs & California Department of Personnel Administration v. SEIU Local 1000, CSEA	Veterans Affairs and DPA sought to enjoin SEIU Local 1000 from engaging in bad faith bargaining and committing a unilateral change in violation of the Dills Act by staging a sick-out of certified nursing assistants (CNAs) at the Chula Vista Veteran's Home over the July 4 holiday weekend.	Request Denied.
I.R. 487	Regents of the University of California v. California Nurses Association	The University requested that PERB seek an injunction preventing the nurses from conducting a one day pre-impasse strike.	Request Granted.
I.R. 488	SEIU Local 1000, CSEA v. State of California (Departments of General Services & Transportation)	SEIU sought to enjoin the State from denying access rights to Union staff representatives to State buildings.	Request Denied.

2005-2006 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 489	Rodney N. Trout v. University Professional & Technical Employees	Trout and Aldern sought court orders regarding UPTE's unconstitutional violation of their free speech rights.	Request Denied.
I.R. 490	Kathy Aldern v. University Professional & Technical Employees		
I.R. 491	Statewide University Police Association v. Trustees of the California State University	The Union filed a request alleging that the University should be restrained from contacting unit members directly regarding current contract negotiations.	Request Denied.
I.R. 492	State of California (Department of Corrections & Rehabilitation & Department of Personnel Administration) v. SEIU Local 1000, CSEA	The State sought to enjoin SEIU Local 1000 from engaging in bad faith bargaining and committing a unilateral change in violation of the Dills Act by staging a one-day sick-out of registered nurses at the California Training Facility at the Salinas Prison in August 2005.	Request Denied.
I.R. 493	San Francisco Unified School District v. SEIU Local 790	The district sought to enjoin the union from engaging in any further unfair and illegal labor actions, including pre-impasse work stoppages such as sickouts, demonstrations and strike-related activities.	Request Denied.

2005-2006 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 494	Statewide University Police Association v. Trustees of the California State University	The association requested that the university be enjoined from publishing negotiations updates to its employees.	Request Withdrawn.
I.R. 495	Coalition of University Employees v. Regents of the University of California	The unions in these three bargaining units sought to enjoin the university from unilaterally implementing changes in health care premiums and co-payments during contract negotiations.	Request Denied.
I.R. 496	UPTE CWA Local 9119 v. Regents of the University of California		
I.R. 497	California Nurses Association v. Regents of the University of California		
I.R. 498	Tony Hicks, et al. v. Compton Unified School District	Hicks and other employees (charging parties) at the district sought injunctive relief regarding the district's alleged discrimination against the charging parties for participating in protected activity.	Request Denied.
I.R. 499	Teachers Association of Long Beach v. Long Beach Unified School District	The association requested injunctive relief due to the district's alleged denial of access to the district's e-mail system for dissemination of negotiations updates by the association.	Request Denied.

2005-2006 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 500	Public Employees Union, Local One v. City of Benicia, California	Local One sought an injunction to require the city to recognize the union as the exclusive representative.	Request Withdrawn.
I.R. 501	San Francisco Municipal Attorneys Association v. City & County of San Francisco	The association sought an injunction to require that the city to act appropriately under the Meyers-Milias-Brown Act.	Request Withdrawn.
I.R. 502	City & County of San Francisco v. Stationary Engineers Local 39	The city and county requested that the Board seek injunctive relief requiring Local 39 to participate in binding arbitration and mandatory impasse resolution procedures.	Request Denied.
I.R. 503	AFSCME Local 146 v. Carmichael Recreation & Park District	AFSCME sought an injunction requiring that the district provide documentation and that it desist from discriminating against an employee.	Request Denied.
I.R. 504	City of San Jose v. Operating Engineers Local 3	The city sought injunctive relief to prevent essential employees from participating in a strike.	Request in Abeyance.
I.R. 505	Fresno Teachers Association v. Fresno Unified School District	The association requested that the Board seek an injunction requiring the district to provide requested information to the union regarding new bargaining unit positions which have no job descriptions.	Request Withdrawn

2005-2006 DECISIONS OF THE BOARD

INJUNCTIVE RELIEF REQUESTS

<u>DECISION NO.</u>	<u>CASE NAME</u>	<u>DESCRIPTION</u>	<u>DISPOSITION</u>
I.R. 506	East Oakland Community Charter Teachers Association v. Education for Change	The association sought an injunction requiring the employer to cease, desist and refrain from conduct outside of the representation process under the guidelines of EERA.	Request Granted. (PERB letter to parties regarding Court complaint not filed based on Education for Change's decision to cancel planned election.)
I.R. 507	Teamsters Local 542 v. County of Imperial	The Teamsters requested that the Board seek an injunction to invalidate a local representation rule.	Request Denied.

2005-2006 LITIGATION CASE ACTIVITY

1. *Coachella Valley Mosquito & Vector Control District v. Public Employment Relations Board/California School Employees Association*, Docket No. 03-0-0340, Fourth District Court of Appeal, Division Two, Case E033577 (Unfair Practice Charge No. LA-CE-65-M). Issue: Does PERB have jurisdiction over violations of the MMBA occurring more than six months prior to the filing of the charge and within the three-year statute of limitations set forth in Code of Civil Procedures section 338? A Petition for Writ of Mandate and Request for Stay of Proceedings was filed on April 24, 2003. The Court granted the request for stay and the Petition for Writ of Mandate on June 3, 2003. The Court ordered PERB to stay PERB proceedings pending a decision in the 4th DCA Case No. E031527, PERB Case No. LA-CE-1-M. On August 11, 2005, Unfair Practice Charge No. LA-CE-65-M was withdrawn.
2. *Fresno County of Education v. Public Employment Relations Board*, Docket No. 04-352, Court of Appeal, Fifth Appellate District, Case Number FO463266, PERB Decision No. 1674, (Unfair Practice Charge Nos. SA-CE-2004-E & 2005-E). Issue: Did PERB err in Decision No. 1674? On September 17, 2004, the Fresno County Office of Education filed a Petition for Writ of Extraordinary Relief. On September 27, 2005, the Court issued an unpublished decision upholding the Board's decision.
3. *The Regents of University of California v. Public Employment Relations Board*, Docket No. 04-0357, Court of Appeal, First Appellate District, Case No. A108001, PERB Decision No. 1689-H, (Unfair Practice Charge No. SF-CE-611-H). Issue: Did PERB err in Decision No. 1689-H? On October 15, 2004, the University filed a Petition for Writ of Review. On July 7, 2005, the Court denied the Petition for Writ of Review.
4. *Siskiyou County Employees Association, Local 3899 of the American Federation of State, County and Municipal Employees v. County of Siskiyou*, Docket No. 05-361, Siskiyou County Superior Court, Case No. SV CV PT 05-0050 (Unfair Practice Charge No. SA-CE-314-M). Issue: Does PERB have exclusive initial jurisdiction over the issues raised by the court case. On March 3, 2005, PERB filed an amicus brief and on April 7, 2005, PERB filed an Application for Leave to Intervene. The Court granted PERB's application to intervene on July 11, 2005, and stayed the Superior Court case pending litigation of the unfair practice charge at PERB. The Court held a hearing on May 24, 2006, and the matter was taken under submission.
5. *Service Employees International Union, Local 790, AFL-CIO v. County of San Joaquin*, Docket No. 05-0362, San Joaquin County Superior Court, Case No. CV026530 (Unfair Practice Charge No. Case SA-CE-330-M). Issue: PERB seeks to intervene in case because the alleged conduct is arguably protected or prohibited under statutes enforced by PERB. On June 30, 2005, PERB filed Application for Leave to Intervene which was granted by the Court on September 13, 2005. PERB filed a motion to dismiss and place remainder of case in abeyance on October 25, 2005. On December 13, 2005, the Court granted PERB's Motion to Dismiss Plaintiff's Second Cause of Action and the remaining allegations were placed in abeyance.

6. *California Association of Professional Scientists v. Governor Arnold Schwarzenegger, State of California*, Docket No. 05-0363, Court of Appeal, Third Appellate District, Case No. C049928, (Unfair Practice Charge No. SA-CE-1468-S). Issue: Did the Superior Court err in denying PERB's request to intervene? PERB filed a notice of appeal on May 25, 2005. Oral argument before the Court of Appeal was held on February 28, 2006 and a decision was issued on March 6, 2006, denying PERB's appeal.

7. *International Association of Fire Fighters Local 188, AFL-CIO v. Public Employment Relations Board/City of Richmond*, Docket No. 05-0364, Contra Costa County Superior Court, Case No. N05-0232, Court of Appeal, First Appellate District, Case Number A108875, PERB Decision No. 1720-M, (Unfair Practice Charge No. SF-CE-157-M). Issue: Did PERB err in issuing a partial dismissal of the unfair practice charge. A Petition for Writ of Mandate was filed on July 19, 2005. On December 19, 2005, the Court requested supplemental briefs. The Court denied the Petition for Writ of Mandate on April 14, 2006.

8. *Public Employment Relations Board v. California Nurses Association*, Docket No. 05-0365, Sacramento County Superior Court, Case No. 05AS03167, (Unfair Practice Charge No. SF-CO-124-H). Issue: Should CNA be enjoined from engaging in a pre-impasse strike? On July 20, 2005, PERB requested a temporary restraining order to enjoin a strike. The Court granted a TRO on July 20, 2005. A preliminary injunction was issued by the Court on September 2, 2005.

9. *Oakland Unified School District v. Public Employment Relations Board*, Docket No. 05-0366, Court of Appeal, First Appellate District, Case No. A110794, PERB Decision No. 1770, (Unfair Practice Charge No. SF-CE-2226-E). Issue: Did PERB err in Decision No. 1770? District filed petition for writ of review on July 21, 2005, and on July 25, 2005, filed a supplemental petition for writ of extraordinary relief. On March 20, 2006, the Court summarily denied the District's petition. The District filed a Petition for Review in the Supreme Court on March 30, 2006. The Supreme Court denied the petition on April 14, 2006.

10. *Union of American Physicians and Dentists v. State of California, Department of Corrections*, Docket No. 05-0367, Sacramento County Superior Court, Case No. 05CS00555 (Unfair Practice Charge No. SF-CE-228-S). Issue: Did the Department of Corrections violate the labor statute by attempting to change the minimum qualifications for the physician job classification when it required doctors to pass a qualification exam prior to employment. UAPD filed a Petition for Writ of Mandate in Superior Court on May 5, 2005. PERB filed an application for leave to intervene on June 14, 2005. The case was removed to the U.S. District Court, Northern District of California on September 6, 2005.

11. *King City Joint Union High School District v. Public Employment Relations Board*, Docket No. 05-0368, Court of Appeal, Sixth Appellate District, Case No. H029420, PERB Decision No. 1777, (Unfair Practice Charge No. SF-CE-2272-E). Issue: Did PERB err in Decision No. 1777? District filed petition for writ of review on October 13, 2005. PERB filed opposition to petition on January 26, 2006.

12. *Barbara Schiavone, et al. v. Rio Linda Elverta Community Water District*, Docket No. 05-0369, Sacramento County Superior Court, Case No. 05-CS01507 (Unfair Practice Charge No. Case SA-CE-358-M). Issue: Should PERB intervene and assert its preemptive jurisdiction over the conduct alleged in the court complaint? On December 12, 2005, the District requested that PERB intervene and assert jurisdiction. PERB filed an application for leave to intervene and alternatively for leave to file an amicus brief on December 14, 2005. On December 29, 2005, the Court stayed its decision on the petition for writ of mandate pending the conclusion of PERB's administrative process on the unfair practice charge.

13. *DiQuisto, et al v. County of Santa Clara, et al*, Docket No. 06-0370, Santa Clara County Superior Court, Case No. 1-04-CV-020671 (Unfair Practice Charge Nos. SF-CE-226, 228, 229-M). Issue: Should PERB intervene and assert its preemptive jurisdiction over the conduct alleged in the court complaint? On January 9, 2006, the County of Santa Clara requested that PERB intervene and support County's Motion for Judgment on the Pleadings. PERB filed its Application for Leave to Intervene on February 6, 2006.

14. *Los Angeles Leadership Academy and Los Angeles Leadership Academy Community United*, Docket No. 06-0371, National Labor Relations Board, Case No. 31-RM-1281 (PERB Case No. LA-RR-1123-E). Issue: Does the NLRB have jurisdiction over charter schools? On December 22, 2005, the LA Leadership Academy Community United filed a petition for representation with PERB. On January 9, 2006, the LA Leadership Academy filed an RM Petition for a Representation Election with the National Labor Relations Board. PERB filed a motion to intervene and dismiss the NLRB petition on January 17, 2006. A hearing on jurisdiction was held before the NLRB hearing on January 23, 2006. NLRB Region 31 dismissed the Academy's petition based on the NLRB's lack of jurisdiction over the charter school on March 2, 2006. The Academy filed a Request for Review to the NLRB in Washington, D.C. on March 16, 2006. On May 17, 2006, the NLRB affirmed the dismissal of the Academy's petition and issued its Decision and Order denying the Request for Review.

15. *Tamiko Mitchell v. Public Employment Relations Board*, Docket No.06-0372, Los Angeles County Superior Court, Central District (-19462-) Case No. LAM 05M21145. Issue: Should a duty of fair representation case be filed against PERB in small claims court? PERB received Plaintiff's Notice and Order re: small claims court on December 30, 2005. The Court dismissed the case on February 3, 2006.

16. *Sierra County and Operating Engineers, Local No. 3 v. County of Sierra*, Docket No. 06-0373, Sierra County Superior Court, Case No. 6539 (Unfair Practice Charge No. SA-CE-369-M). Issue: Should PERB intervene and assert its preemptive jurisdiction over the conduct alleged in the court complaint? On November 2, 2005, PERB received request to intervene in a criminal matter filed against petitioner. On December 6, 2005, petitioner withdrew his request without prejudice.

17. *Leadership Public Schools and California Federation of Teachers*, Docket No. 06-0374, National Labor Relations Board, Region 32, Case No. 32-RM-800 (PERB Case No. SF-RR-882-E.) Issue: Does the NLRB have jurisdiction over charter schools? On March 9, 2006, PERB filed a Motion to Intervene and Dismiss the Representation Petition filed with the

NLRB by the Leadership Public Schools. The NLRB conducted a hearing on the issue of its jurisdiction over charter schools on March 27 and 29, 2006. The NLRB Regional Director issued a decision and order on May 5, 2006 denying the School's petition. A Request for Review was filed with the NLRB in Washington D.C. on June 1, 2006, and PERB filed its opposition on June 7, 2006.

18. *The Board of Trustees of the California State University v. Public Employment Relations Board/California Faculty Association*, Docket No. 06-0376, Court of Appeal, Second Appellate District, Case B189869 (Unfair Practice Charge No. LA-CE-784-H.) Issue: Did PERB err in decision number 1823-H? The Board of Trustees filed a Petition for Review of Decision No. 1823-H on March 24, 2006.

19. *Oakland Education For Change and East Oakland Community Charter Teachers Association*, Docket No. 06-0377, National Labor Relations Board, Region 32, Case No. 32-RM-801 (PERB Case No. SF-RR-881-E.) Issue: Does the NLRB have jurisdiction over charter schools? Oakland Education for Change filed an RM Petition with the NLRB on February 14, 2006. On March 30, 2006, PERB filed a Motion to Intervene and dismiss the petition with the NLRB. The NLRB Regional Director issued a Decision and Order denying the Petition on May 9, 2006. The charter school filed a Petition for Review with the NLRB in Washington, D.C. on June 7, 2006 and PERB filed its opposition on June 28, 2006.

20. *AFSCME Local 2620 v. United Health & Social Service Professionals*, Docket No. 06-0389, Alameda County Superior Court, Case No. RG 06-256743, (Unfair Practice Charge No. SA-CO-286-S.) Issue: Should PERB intervene and assert jurisdiction over the conduct alleged in the court complaint? On March 15, 2006, PERB was requested to intervene in a case filed by AFSCME in Alameda Superior Court against United Health Professionals. PERB reviewed the matter and declined to intervene on March 21, 2006.

21. *SEIU, Local 415 v. County of Santa Cruz*, Docket No. 06-0378, Santa Cruz County Superior Court, Case No. CISCV153144. (Unfair Practice Charge No. SF-CE-347-M.) Issue: Should PERB intervene to assert jurisdiction? On March 24, 2006, PERB received request to intervene. Matter was settled by the parties on April 7, 2006.

22. *City of San Jose v. Operating Engineers Local Union No.3*, Docket No. 06-0379, Santa Clara Superior Court, Case No. 106CV064707, (Unfair Practice Charge No. SF-CO-132-M.) Issue: Does PERB have jurisdiction over the question of whether essential employees can participate in a strike? The City filed an application for a temporary restraining order on June 1, 2006. PERB filed its opposition to request for injunctive relief on June 1, 2006. On June 9, 2006, the Court dismissed the City's complaint based on PERB's exclusive initial jurisdiction.

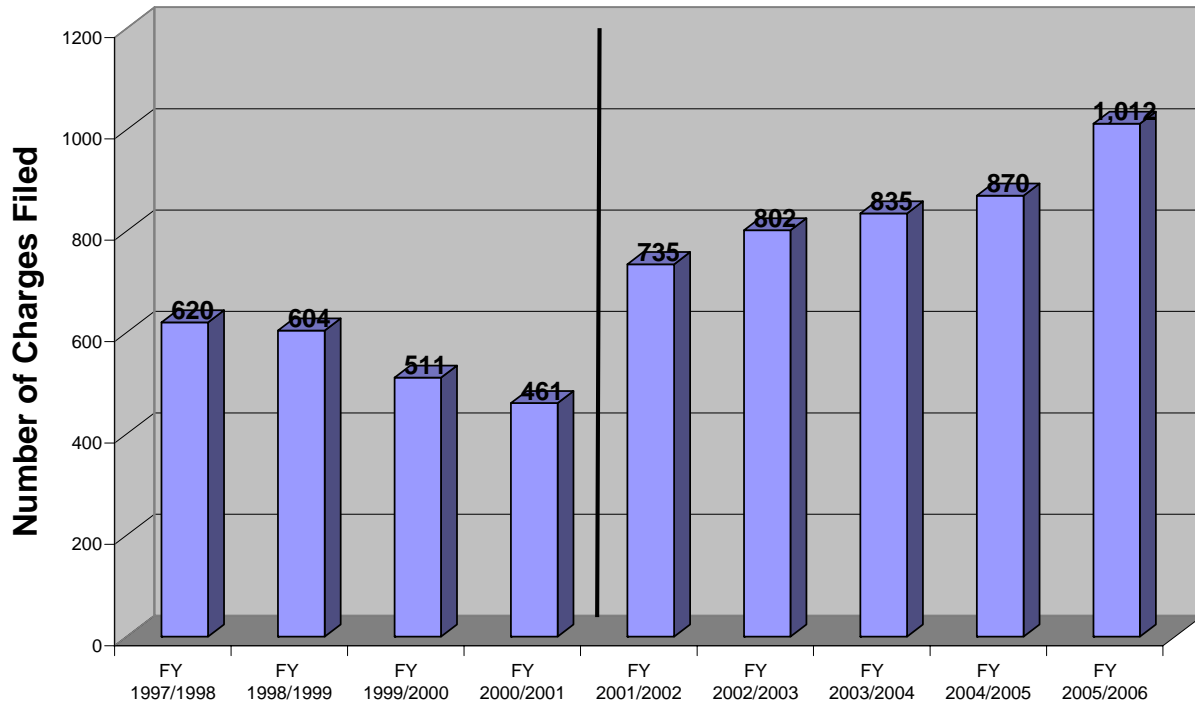
23. *City of San Jose v. Operating Engineers Local Union No.3*, Docket No. 06-0379(a), Court of Appeal, Sixth Appellate District, Case No. H030272, (Unfair Practice Charge No. SF-CO-132-M.) Issue: Does PERB have jurisdiction over the question of whether essential employees can participate in a strike? On June 9, 2006, the City filed a Petition for Writ of Supersedeas with the Court of Appeal. On June 14, 2006, PERB filed its opposition to the

writ, an application to intervene, and alternatively, an application for leave to file amicus curiae brief. On June 14, 2006, the Court issued a stay order enjoining essential employees from participating in a strike. The Court granted PERB's request to file an amicus brief and requested supplemental briefing. PERB filed its supplemental opposition brief on June 20, 2006.

24. *County of Contra Costa v. Public Employees Union Local One, et al.*, Docket No. 06-0380, Contra Costa Superior Court, Case No. MSC06-01228. Issue: Does PERB have jurisdiction over the question of whether essential employees can participate in a strike? On June 23, 2006, the County filed an application for a temporary restraining order. PERB filed an opposition to the request for injunctive relief on June 23, 2006. On June 23, 2006, the Court granted the TRO enjoining certain employees from participating in a strike and granted PERB's application for leave to intervene.

25. *County of Contra Costa v. California Nurses Association*, Docket No. 06-0381, Contra Costa Superior Court, Case No. MSC06-01227. Issue: Does PERB have jurisdiction over the question of whether essential employees can participate in a strike? On June 23, 2006, the County filed an application for a temporary restraining order. The Court granted the TRO enjoining County nurses from participating in a strike on June 23, 2006.

Unfair Practice Charge Filings



Notes: The vertical line illustrates when MMBA jurisdiction took effect (July 1, 2001). Also, in Fiscal Year 2004-2005, the total number of charges filed (1,126) was adjusted to discount 256 nearly identical charges filed by a single group of employees (see p. 13).